

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 IO-13 ADP-00 AF-10 ARA-16 EA-11 NEA-10

RSC-01 OIC-04 SY-10 USSS-00 CAB-09 CIAE-00 COME-00

DODE-00 EB-11 INR-10 NSAE-00 FAA-00 DOTE-00 SS-15

NSC-10 PRS-01 A-01 SCA-01 /162 R

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MONTREAL FOR ICAO REP

E.O. 11652: GDS

TAGS: ICAO, ETRN, IS, LE

SUBJECT: ICAO AIR SECURITY CONFERENCE - LEGAL BRIEF

REFS: (A) ROME 8747

(B) STATE 171207

1. DEPT. APPRECIATES DEL REPORT OF OBVIOUSLY THOROUGH AND EXCELLENT LEGAL BRIEF. WE HAVE FOLLOWING COMMENTS REGARDING SUBSTANTIVE POINTS CONTAINED THEREIN:

(A) ON GENERAL SUBJECT OF SANCTIONS IMPOSED BY ICAO REFERRED TO THROUGHOUT BRIEF: WE DO NOT HAVE MAJOR LEGAL PROBLEMS, OR MAJOR CONCERNS RE CONSISTENCY WITH PAST U.S. POSITION ON SANCTIONS, ALTHOUGH IN PAST WE HAVE NOT MADE LIMITED OFFICIAL USE

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POINT OF PRECISELY DISTINGUISHING ICAO-IMPOSED SANCTIONS

FROM THOSE IMPOSED AS UNILATERAL ACTS OF GROUP OF STATES ACTING IN CONCERT; AND WE HAVE BLURRED ISSUE ALTOGETHER REGARDING ABILITY ICAO ORGANS TO TAKE ACTION OR TO MAKE RECOMMENDATIONS TO STATES ON JOINT ACTION. (SEE U.S. SUBMISSIONS ON ARTICLES 3 AND 4, ANNEXES TO OFFICIAL ICAO REPORT OF LAST SEPTEMBER'S SPECIAL SUBCOMMITTEE MEETING.) AS TACTICAL MATTER EXTENSIVE PRESENTATION OF POSITION RE ICAO-IMPOSED SANCTIONS MAY POSE A PROBLEM, AS YOU HAVE INDICATED BY PARENTHETICAL COMMENT IN ROMAN III, PARA. (C)(1) OF BRIEF, AND YOU MAY WANT TO STAY AWAY FROM THIS TO PRESERVE MAXIMUM FLEXIBILITY ON INDEPENDENT CONVENTION.

(B) REGARDING VIENNA CONVENTION DISCUSSION ON MATERIAL BREACH IN ROMAN III, PARA. (C)(4), REQUEST FROM DEPT. IF YOU DO NOT HAVE COPY OF STATE'S 158062, 25 SEPTEMBER 1970, UNCLASSIFIED, CIRCULATED TO ALL DIPLOMATIC POSTS, THE US POSITION ON LEGAL JUSTIFICATION FOR CUTTING OFF CHICAGO CONVENTION RIGHTS TO STATES WHICH VIOLATE HAGUE AND TOKYO OBLIGATIONS. THIS POSITION WAS DRAWN ON BY US DELS 18TH ICAO LEGAL COMMITTEE, AND APRIL 1971 AND SEPTEMBER 1972 SPECIAL SUBCOMMITTEES FOR ESTABLISHING LEGAL VALIDITY OF AIR SERVICE BOYCOTT SANCTION PROPOSED BY U.S. AND CANADA AT THOSE TIMES. INDIA ALSO DREW ON THESE ARGUMENTS, SUBMITTED A WORKING PAPER COVERING THEM, JUSTIFYING PAKISTAN OVERFLIGHT CUTOFF WHEN INDIA-PAKISTAN DISPUTE WAS BEFORE ICAO COUNCIL. (INDIA PAPER IS APPENDIX F TO OFFICIAL ICAO REPORT OF APRIL 1971 SPECIAL SUBCOMMITTEE MEETING.) WE UNDERSTAND THAT IN PRESENTATION POINTS IN III, PARA. (C)(4), US DEL WOULD ASSURE CONSISTENCY IS MAINTAINED WITH THE EARLIER USG POSITION.

(C) REGARDING IV(A) DEL SHOULD BE AWARE THAT IN MONTREAL COUNCIL DEBATE AUGUST 20 ON LEBANESE RESOLUTION CERTAIN COUNCIL REPS MADE STATEMENTS FOR RECORD THAT THEY INTERPRETED RESOLUTION AS CALLING FOR ACTION REGARDING PAST ACTS. SUMMARY MINUTES OF THESE STATEMENTS MAY BE PRODUCED BY ICAO AS ROME CONFERENCE DOCUMENTS, PER REQUEST AT ICAO BY SENEGAL COUNCIL REP (DIALLO). THUS, IF DEL MAKES MAJOR ISSUE THAT RESOLUTIONS ARE LIMITED SOLELY TO PROSPECTIVE ACTION, YOU CAN EXPECT CERTAIN DELS LIMITED OFFICIAL USE

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MAY STRONGLY DISAGREE, PERHAPS HAVING AVAILABLE A LEGISLATIVE HISTORY PURPORTING TO SUPPORT THEM IN ROME CONFERENCE DOCUMENTS.

(D) WE ARE CONCERNED THAT ARGUMENT IV(B)(5) COULD BE OF GREAT SERVICE TO THOSE OPPOSED REPEAT OPPOSED TO US POSITION ON INDEPENDENT CONVENTION. THEY WOULD TAKE POSITION INDEPENDENT CONVENTION MUST BE OPPOSED BY

CHICAGO CONVENTION PARTIES, SINCE BY BECOMING PARTY THESE STATES HAVE AS A MATTER OF POLICY IN EFFECT CHOSEN ICAO COUNCIL TO PERFORM SUCH FUNCTIONS PURSUANT TO CHICAGO PROVISIONS AS ARE PROPOSED FOR INDEPENDENT CONVENTION.

(E) REGARDING IV(C), ICAO COUNCIL HAS ESTABLISHED ELABORATE PROCEDURE FOR MAKING CHAPTER XVIII DECISIONS. (THIS PROCEDURE MOST RECENTLY INVOKED IN INDO-PAKISTAN OVERFLIGHT DISPUTE BEFORE ICAO COUNCIL.) THIS PROCEDURE HAS NOT BEEN FOLLOWED, NOR, SO FAR AS WE CAN DETERMINE, WAS IT PROPOSED THAT IT BE USED, OR SUSPENDED, FOR CONSIDERATION OF ISRAELI INCIDENT. OUR VIEW IS THEREFORE

THAT ARGUMENT (WHICH CONCEIVABLY SOME MIGHT ATTEMPT) THAT AUGUST 20 COUNCIL RESOLUTION REPRESENTS CHAPTER XVIII DECISION COULD NOT BE PURSUED EFFECTIVELY OR FAR. ROGERS

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